IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 667 of 2005.

Decided on: 26.09.2007.

Kuldeep Singh.	**…**	**…**	**Petitioner.**
Versus			
State of H.P. & Others.	**…**	**…**	**Respondents.**

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the Petitioner:	**Mr. Ashok Sharma, Advocate.**
For Respondents No.1 to 3:	**Mr. M.S. Chandel, Advocate General with Ms. Meenakshi Sharma, Deputy Advocate General.**
For Respondents No.4 & 5:	**Mr. K.D. Shreedhar, Advocate.**

Rajiv Sharma, Judge:

The brief facts necessary for the adjudication of this petition are that the land of the petitioner measuring 1-9-8 bighas situated in Mohal Raj Nagar, Tehsil and District Chamba was acquired for construction of Chamera Hydroelectric Project Stage-I. The State of Himachal Pradesh has framed a Scheme called the **Resettlement and Rehabilitation of Oustees of Chamera Hydro-electric Project (Grant of Land) Scheme, 1992.** Sub-para (i) of para 2 of the Scheme defines the expression "oustee" as under:-

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[1] Whether reporters of local papers may be allowed to see the judgment? No.

> **"2 (i) 'Oustee' means a person who has been deprived of his house, land or both on account of acquisition proceedings/private negotiation in connection with the construction of Chamera Project and entitled to compensation in lieu thereof and includes his successors in interest."**

Similarly, expression "family" has been defined in sub-para (ii) of para 2 of the Scheme, which reads thus:-

> **"2 (ii) 'Family' means husband/wife of the oustee, their children including step or adopted children, and includes his parents and those brothers and sisters who were living and cultivating land jointly with him before acquisition/ private negotiation.**

A High Power Committee was constituted by the State for the rehabilitation of the oustees. The High Power committee constituted a Sub Committee on 24.7.2000 which took a decision on 18.11.2002 to pay a package of rupees three lakhs to the oustees of the Chamera Hydro-electric Project. Since the land of the petitioner was acquired, his name was included in the draft tentative list of 192 affected families at Sr.No.38 drawn on 1.7.2004. His name was struck off from the final list (Annexure R-2) annexed with the reply of the respondents No.1 to 3 on the basis of the decision taken by the Committee.

Mr. Ashok Sharma has strenuously argued that since the land of his client measuring 1-9-8 bighas has been acquired for the construction of Chamera Hydro-electric Project Stage-I, he is entitled to package as announced by the State of Himachal Pradesh on the basis of the recommendations made by the Sub-Committee. He also contended that the authorities were required to see only whether his case fell within the description of oustee or not. He then contended that the decision dated 9.9.2004 is against the norms laid down for the purpose of release of

package. The learned Advocate General and Shri K.D. Shreedhar appearing on behalf of the respondents have supported the decision dated 9th September, 2004. The learned Advocate General contended that though the name of the petitioner was included in the tentative list at Sr. No.38, but on the basis of objections raised by certain persons his name was deleted from the final list after hearing the petitioner.

I have heard the learned counsel for the parties and perused the record carefully.

The package has been announced by the State of Himachal Pradesh on the basis of the recommendations made by the Sub-Committee on 18.11.2002. As per the package, a sum of rupees three lakhs is to paid to the oustees whose land has been acquired for the construction of Chamera Hydro-electric Project Stage-I. It is evident from the expression 'oustees' as quoted hereinabove as per the Scheme notified on 5th March, 1993 to mean a person who has been deprived of his house, land or both on account of acquisition proceedings/private negotiation in connection with the construction of Chamera Project and who was entitled to compensation in lieu thereof and includes his successors in interest. The respondents have not placed any other document on record suggesting any different meaning which has been assigned to the oustees as per notification dated 5th March, 1993. I am of the opinion that the expression 'oustee' as defined in the notification dated 5th March, 1993 is relevant to decide the present lis. It is admitted fact that the land of the petitioner measuring 1-9-8 bighas situated in Mohal Raj Nagar, Tehsil and District Chamba was acquired for the purpose of construction of Chamera Hydro-elelctric Project Stage-I. The total holding of the petitioner was 1-13-0 bighas and after the acquisition of the land he was left with only 0-3-12 bighas of land. It has come in the reply filed by respondents No.1 to 3 that the father of the petitioner

had distributed his land among his all children and wife before acquisition of land for Chamera Hydro-electric Project Stage-I and the petitioner was absolute owner at the time of acquisition of the land. The name of the petitioner was in fact included at Sr. No.38 of the tentative list circulated on 1st July, 2004. It appears that certain persons as per the details given in the sur-rejoinder to the rejoinder filed by the petitioner, namely, Shri Dalip Singh, Amar Chand, Yog Singh, Prithu Ram, Sarla Devi, Dumnu Ram, Tej Singh and Geeta Devi have raised objections with regard to the inclusion of the petitioner in the tentative list. It is evident from the reading of Annexure R-7, dated 30th July, 2004 that primarily the objection centered around the fact that petitioner's two brothers and sister-in-law and real sister were already granted employment and on 30.4.1981 the petitioner was minor. He was served with a notice dated 20.8.2004 whereby directing him to appear before the Relief and Rehabilitation Officer, Chamba on 6.9.2004. It is evident from the notice Annexure R-11 that the same was vague and not capable of being answered. The petitioner was required to be supplied with the complaints lodged by certain person against him to enable him to answer the same effectively.

He appeared before the Committee on 9th September, 2004. It is mentioned in the report, dated 9th September, 2004 that his inclusion in the list was objected to by many person, but it appears at that stage also he was not apprised of the nature of complaints against him to enable him to defend himself effectively. The Committee to ascertain which of the two Parivar Registers were correct, summoned the original Parivar Register attached with the survey record. In the original Parivar Register it was recorded that the petitioner was living separately from his father and his date of separation was recorded as 1988. The Committee comprising of Land Acquisition Officer, Sub Divisional Magistrate and

Relief and Rehabilitation Officer including the Additional District Magistrate have unnecessarily got themselves embroiled in the controversy whether the petitioner was living separately from his father or not. What was to be seen by the Committee was whether the land of the petitioner was acquired for the construction of Chamera Hydro-electric Project Stage-I or not. This aspect has been over-looked by the Committee. The land of the petitioner has been acquired and this fact has been admitted by the respondents No.1 to 3 in their reply and on that basis his name was to be included in the list for the purpose of release of the package. The name of the petitioner has been wrongly struck off on the basis of the report dated 9th September, 2004, which runs contrary to the Scheme/package released by the State Government.

The decision dated 9th September, 2004 is also violative of the principles of natural justice since the petitioner has not been afforded reasonable opportunity to defend himself which he could do only if the material, i.e. the complaints etc. had been supplied to him. Accordingly, the decision dated 9th September, 2007 and the consequent striking off the name of the petitioner from the list of persons entitled for the package is declared arbitrary.

Accordingly, the writ petition is allowed. Annexure R-13, dated 9th September, 2004 is quashed and set aside with a direction to the respondents to include the name of the petitioner in the list of affected persons. The respondents are directed to release the amount to the petitioner within a period of eight weeks from today.

There shall be no order as to costs.

(Rajiv Sharma), Judge

September 26, 2007.
(sck).